UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWRENCE STEPHEN MAXWELL, et al., **Plaintiffs,** **v.** **PAUL O'NEILL,** **Defendant.**	**Civil Action 00-01953 (HHK)**

MEMORANDUM OPINION

Plaintiff Lawrence Stephen Maxwell ("Maxwell") and approximately 561 other similarly situated individuals and entities bring this action against defendant Secretary of the Treasury, Paul O'Neill.[1] Plaintiffs seek declaratory and injunctive relief under various statutory and constitutional provisions for defendant's alleged unlawful withholding and/or maintenance of certain tax records and defendant's alleged unlawful taxation of plaintiffs. Before the court is defendant's motion to dismiss or for summary judgment. Upon consideration of the motion, the opposition thereto, and the summary judgment record, the court concludes that defendant's motion must be granted in part and denied in part.

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[1] This action is a consolidation of two separate lawsuits, Lawrence Stephen Maxwell, et al. v. Lawrence H. Summers, 00cv1953 and Wayne A. Paul, et al. v. Paul O'Neill, 01cv0246. At plaintiffs' request, the cases were consolidated on October 25, 2001.

I. FACTUAL BACKGROUND

On June 9, 2000, plaintiff Maxwell sent a ten-page letter to the Internal Revenue Service ("IRS") National Office of Disclosure seeking disclosure of tax-related information for the tax years 1987 to 2000. Maxwell sought disclosure of at least nineteen different types of information pertaining to him, including, but not limited to: (1) "return information;" (2) records "that determined that [Maxwell] was subject to the enforcement authority of the United States Department of the Treasury pursuant to some specific statute;" (3) records showing that Maxwell "ever received any income from . . . any federal source;" (4) records showing that Maxwell is "a citizen of the United States;" and (5) records showing that Maxwell "resided or worked within one of the specified areas of federal jurisdiction of the United States government." Def.'s Mot. Ex. A. The letter was framed as a request under Section 6103 of the Internal Revenue Code, 26 U.S.C. § 6103 ("Section 6103" or "§ 6103"), which provides that "tax return information" "shall, upon written request, be open to inspection by or disclosure to" the individual who filed the return. 26 U.S.C. § 6103(e)(1)(A)(i).

The other plaintiffs to this action also sent letters to the IRS which were identical to Maxwell's in all relevant respects. *See* Wayne A. Paul, et al. v. Paul O'Neill, Second Am. Original Compl. ("Paul, Second Compl.") at 106. With regards to their request for "return information," plaintiffs cited the definition of "return information" provided in Section 6103 verbatim, *see id.* at (b)(1), (2), and also cited the D.C. Circuit's decision, *Lake v. Rubin*, 162 F. 3d 113 (D.C. Cir. 1998). Plaintiffs relied on *Lake* for the proposition that "individuals seeking 'return information' . . . must do so pursuant to § 6103 . . . rather than the Privacy Act." 162 F.3d at 116. In *Lake*, the plaintiffs alleged that the IRS violated the

Privacy Act by failing to disclose certain tax information about the plaintiff class. Maxwell was a member of the class in *Lake* and actively participated in the litigation.

After sending their identical requests to the IRS, Maxwell and the other plaintiffs received identical responses from the agency. *See* Paul, Pls.' Resp. to Def.'s Mot. to Dismiss at 28 n. 2. In a letter to each plaintiff, the IRS stated that it was responding to "your Freedom of Information/Privacy Act" request and stated that "[c]onsidering the breadth of your request and the burden searches of this magnitude place on restricted IRS sources, you are required to follow our published procedures for making a request under the Privacy Act of 1974." Def.'s Mot. Ex. B at 1. The letter then directed each recipient to the provisions of the Code of Federal Regulations setting forth these procedures. In addition, the IRS noted that if the request sought documents concerning one's personal liability to pay federal income taxes, it would not constitute a request for existing documents but instead a "request for the creation of personalized statements regarding your tax liability." *Id.* Finally, the letter noted that the Sixteenth Amendment to the United States Constitution authorizes the collection of federal income taxes, and that the Freedom of Information Act is "not a vehicle that can be used to challenge these legal requirements." *Id.* at 2.

Symeria R. Roscoe, Program Analyst for the IRS Freedom of Information division, also responded to Maxwell's request in a letter sent July 21, 2000. Roscoe's letter stated that it was in response to Maxwell's "Freedom of Information Act request." The letter informed Maxwell that IRS headquarters did not maintain centralized files concerning taxpayers and that any records regarding IRS action taken in reference to Maxwell could be found at the IRS "Service Center or District Office in which such action took place or where you filed your income tax returns." Def.'s Ex. C. The letter then

advised Maxwell that if he wished to obtain IRS documents relating to him, he should forward his request to the appropriate Service Center or District Office together with evidence of his identity and a statement of his willingness to pay any fees. *See id.*

After receiving these responses from the IRS, plaintiffs filed suit in this court, seeking various forms of declarative and injunctive relief. Plaintiffs request that the court: (1) enjoin the IRS from withholding the tax records they seek and declare that such withholding violates Section 6103; (2) enjoin the IRS from maintaining other tax records and declare that the maintenance of such records violates the Privacy Act; (3) declare that plaintiffs are not citizens of the United States and do not reside or work therein; (4) declare that Texas is not a part of the United States; and (5) declare that the United States "is not a Republican form of government as required by the Constitution . . . and must therefore be abolished." Pl.'s Compl. at 20; Paul, Second Compl. at 112-116.

Defendant now moves to dismiss or in the alternative for summary judgment. Defendant argues that the court lacks subject matter jurisdiction under Section 6103 to compel the disclosure of the information plaintiffs request, and that the information cannot be disclosed under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") because plaintiffs failed to make a proper FOIA request and failed to exhaust their administrative remedies.

II. ANALYSIS

A. Standard of Review

Under Federal Rule of Civil Procedure 56, summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact in dispute and that the movant is entitled to judgment as a matter of law. Facts "that

might affect the outcome of the suit under the governing law" are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant's opposition must consist of more than mere unsupported allegations or denials and must be supported by affidavits or other competent evidence setting forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56 (e); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The non-movant's evidence must be of a nature "that would permit a reasonable jury to find" in its favor. *Laningham v. Navy*, 813 F.2d 1236, 1242 (D.C. Cir. 1987). Evidence that is "merely colorable" or "not significantly probative" is not sufficient to sustain a grant of summary judgment. *Anderson*, 477 U.S. at 249-50.

B. Subject Matter Jurisdiction

Defendant argues that § 6103 does not supersede the FOIA and therefore does not serve as an independent means of establishing this court's subject matter jurisdiction. Plaintiffs argue that § 6103 does provide jurisdiction as it is the sole vehicle for obtaining the kind of information they seek. Plaintiffs base this argument upon the D.C. Circuit's statement in *Lake* that § 6103 "represents the exclusive statutory route for taxpayers to gain access to their return information," 162 F.3d at 115-16, citing *Cheek v. IRS*, 703 F.2d 271, 271-272 (7th Cir. 1983), a proposition the court reiterated in *Gardner v. United States*, 213 F.3d 735, 741 (D.C. Cir. 2000).

In *Lake*, the court held that the district court lacked subject matter jurisdiction to hear the plaintiffs' claim that the IRS violated the Privacy Act by failing to disclose their tax return information. The court found that because Section 6103 dealt "very precisely and comprehensively with the [IRS's] disclosure of tax return information," "the specific provisions of § 6103 rather than the general provisions

of the Privacy Act govern the disclosure of the sort of tax information requested here." *Lake*, 162 F.3d at 115-16.

Although it is understandable that plaintiffs would rely on § 6103 after the court's decision in *Lake*, plaintiffs misconstrue the *Lake* court's statements as indicating that § 6103 represents the *only* statute applicable to their requests. *Lake*, *Gardner*, and *Cheek* involved claims brought solely under the Privacy Act, 5 U.S.C. § 552(a), and thus they addressed only the relationship between § 6103 and the Privacy Act. Therefore, the fact that the court held in those cases that § 6103 displaces the Privacy Act does not answer the question of whether it also displaces the FOIA.

In fact, the D.C. Circuit held in a case prior to *Lake* and *Gardner* that it does not. In *Church of Scientology v. IRS*, 792 F.2d 146 (D.C. Cir. 1986), a case in which the plaintiff sought disclosure of tax information, the court held that "Section 6103 does not supersede FOIA but rather gives rise to an exemption under Exemption 3, 5 U.S.C. § 552(b)(3)." *Church of Scientology*, 792 F.2d at 150. In so ruling, the court rejected the IRS's argument, equivalent to the argument plaintiffs advance here, that § 6103 "totally supersedes the FOIA and provides the exclusive criteria for release of records affected by that section." *Id.* at 148.

Although the plaintiff's request in *Church of Scientology* did not expressly seek "return information," in reaching its decision, the court relied on two cases in which such information was requested, *Linsteadt v. IRS*, 729 F.2d 998 (5th Cir. 1984), and *Currie v. IRS*, 704 F.2d 523 (11th Cir. 1983). Moreover, in *Church of Scientology*, the court expressly declined to follow *King v. IRS*, 688 F.2d 488 (7th Cir. 1982), a Seventh Circuit decision holding that § 6103 overrides the FOIA with respect to return information. Both the *Linsteadt* and *Currie* courts held that § 6103 is not an

independent means of obtaining return information, but rather operates as part of the larger FOIA framework. "[J]udicial review of the agency's nondisclosure [under § 6103] is governed by the Information Act." *Linsteadt*, 729 F.2d at 999.

Any remaining doubt as to *Church of Scientology* and *Lake's* reconcilability is removed by the fact that the latter decision cites the former favorably. In addition, as defendant notes, for the D.C. Circuit to have overruled *Church of Scientology* in *Lake*, it would have had to do so *en banc*. *See* Fed. R. App. P. 35(a); D.C. Circuit R. 35. Thus, while § 6103 may supersede the Privacy Act, it does not supersede the FOIA. Section 6103, therefore, cannot provide an independent basis for subject matter jurisdiction. Plaintiffs must therefore satisfy the requirements applicable under the FOIA for invoking the jurisdiction of this court.

C. FOIA Requirements

1. Validity of FOIA Request

In order to instigate disclosure under the FOIA, a party must make a proper FOIA request. The Treasury Department's published FOIA regulations list seven requirements for a proper FOIA request. *See* 31 C.F.R. § 1.5(b) (2002).[2] Defendant argues that plaintiffs' requests failed two of these requirements because (1) they did not send the request to the appropriate bureau, *see* 31 C.F.R. § 1.5(b)(3) (2002); and (2) they did not "reasonably describe the records" sought. *Id.* at § 1.5(b)(4). Defendant argues that due to these flaws, plaintiffs' suit is subject to dismissal for lack of subject matter jurisdiction. *See, e.g., Dettmann v. Dep't of Justice*, 802 F.2d 1472, 1477 (D.C. Cir. 1986).

[2] A person requesting information under the FOIA must follow a particular agency's regulations in making a request of that agency. *See* 5 U.S.C. 552 (a)(3)(A).

Plaintiffs addressed their requests to the IRS National Office of Disclosure. Defendant contends that the requests were not addressed to the "appropriate bureau" because the National Office of Disclosure does not have jurisdiction over the records of individual taxpayers. Defendant further contends that its regulations require that requests for tax records be addressed to the district office where the person making the request resides, as plaintiffs were advised.

Assuming *arguendo* that plaintiffs did not send their requests to the proper address, the consequence of such a misstep is the tolling of the period in which the government is required to respond. *See* 31 C.F.R. § 1.5(a)(1), (c)(1) (2002). Defendant's regulations nonetheless require it to forward the request to the correct bureau. *See id.* at § 1.5(c)(1). Thus, for instance, because Maxwell resides in Texas, his request should have been forwarded to the IRS district office in Houston, Texas, and his failure to send it to that address does not appear fatal to the propriety of the request.

Second, defendants contend that plaintiffs' requests were faulty because, to be proper, a FOIA request must describe the records sought with sufficient detail to enable an agency employee to locate the records with reasonable effort. *See Goland v. CIA*, 607 F.2d 339 (D.C. Cir. 1978). While responding to FOIA requests, an agency is not required to perform legal research, create individualized records, or answer legal questions. *See, e.g., Tax Analysts v. IRS*, 1998 WL 419755 at *2 (D.D.C. May 1, 1998). In addition, the IRS Manual states that "requests for 'all records concerning me' or 'all records containing my name' are not specific enough to process and should be rejected as imperfect." Internal Revenue Manual 11.3.13.5.2(1) (April 5, 2002). Such requests are referred to as "pseudo requests." Pseudo requests are requests that exhibit one or more of the following characteristics:

1. Questions are frequently phrased in an accusatory or devious manner;

2. The letters may contain references to constitutional rights . . .;
3. Any requests for records included in the correspondence are extremely extensive, poorly described, incorrectly addressed or otherwise written so as to make it difficult to respond.
4. Requesters may sometimes ask for all records concerning or serving as background materials for certain "decisions" or "determinations" concerning themselves. *See id.*

Plaintiffs' ten-page letter, containing nineteen separate requests, at times exhibits each of these tendencies. For instance, in his letter to the IRS, Maxwell requests "any and all records containing information about Lawrence Stephen Maxwell" and requests records the IRS used in determining that he is subject to federal income tax requirements. In addition, Maxwell and the other plaintiffs invoke various constitutional provisions which they claim shield them from tax liability.

Nevertheless, IRS guidelines do not allow for the wholesale rejection of such requests. Requests for "all records concerning me" "should be thoroughly reviewed as they may contain minor references to records or enforcement actions that would help to identify the records requested." Internal Revenue Manual 11.3.13.5.2(2). The guidelines also state that "in order to make an appropriate response to a pseudo-request, it is necessary to clearly distinguish between those portions of the correspondence which constitute a valid FOIA request and those portions which consist of hyperbole and questions." *Id.* at 11.3.13.5.5(4). If records responsive to a portion of a request can be identified, that portion of the request should be processed.

The portion of plaintiffs' requests that seeks "return information" does not suffer from the same defects as the rest of their requests and should have been appropriately distinguished therefrom. Plaintiffs quoted verbatim the definition of "return information" contained in Section 6103, and defendant processes similar requests for such records on a daily basis. Thus, defendant should not have classified

that portion of plaintiffs' requests as a "pseudo request." As defendant's FOIA regulations admonish, "the reasonable description requirement shall not be used by officers or employees of the Department of the Treasury to improperly withhold records from the public." 31 C.F.R. § 1.5(d).

2. Exhaustion of Administrative Remedies

Upon denial of a FOIA request, judicial review in this court is unavailable unless a party first exhausts his or her administrative remedies. Exhaustion of remedies gives the agency "an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision," and allows the agency to "correct mistakes made at lower levels and thereby obviat[ing] unnecessary judicial review." *Oglesby v. Dep't of the Army*, 920 F.2d 57, 61 (D.C. Cir. 1990), citing *McKart v. United States*, 395 U.S. 185, 194 (1969). Defendant argues plaintiffs failed to exhaust their administrative remedies by failing to follow the prescribed administrative appeals process within the agency.

Defendant's argument fails to acknowledge, however, the difference between a denial of a FOIA request and a determination that a FOIA request is deficient. According to defendant's regulations, "[a] determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal." 31 C.F.R. § 1.5(f) (2002). The letters defendant sent to plaintiffs in response to their requests nowhere stated that their requests were denied. Instead, the IRS informed plaintiffs that their requests did not comply with regulatory requirements and advised them how to cure the error. (This advice, incidentally, was inconsistent. While the letter sent to all plaintiffs advised plaintiffs they needed to follow Privacy Act procedures, the Roscoe letter sent to Maxwell told him he needed to address his request to the IRS district office pursuant to FOIA

procedures.) The cases cited by defendant, *see, e.g., Oglesby*, 920 F.2d 57; *Taylor v. Appleton*, 30 F.3d 1365, 1369 (11th Cir. 1994), stand only for the principle that, upon denial, a party must file an administrative appeal before resorting to the courts, and are therefore inapposite. Here, the agency did not issue a denial, and therefore plaintiffs did not have the option of filing an administrative appeal.

The question that remains, then, is whether plaintiffs can obtain review in this court of defendant's determination that their requests were deficient when no agency review is available. We have unearthed only one case presenting a similar question, *Dickstein v. IRS*, 635 F. Supp. 1004 (D. Alaska 1986). In *Dickstein*, the plaintiffs filed a FOIA request for copies of tax assessments made under Sections 6203 and 6303 of the Internal Revenue Code ("IRC"). The IRS responded to the request by informing the plaintiffs that "[a]ssessment information is available under IRC § 6203; therefore, the [IRS] will not process such a request under the FOIA." *Dickstein*, 635 F. Supp. at 1006. The IRS forwarded the plaintiffs' requests to the proper bureau and also informed the plaintiffs as to how to remedy the defect in their requests. Rather than awaiting a response from the appropriate bureau or remedying the defect as instructed, the plaintiffs filed an administrative appeal. The IRS denied the appeal on the grounds that deficient requests are not eligible for appeals, and the plaintiffs then brought suit in federal court. The *Dickstein* court found that the IRS' response constituted a notice of deficiency rather than a denial. *Id.* The court dismissed the suit on the grounds that the IRS had properly processed the deficient request by forwarding it to the appropriate bureau and that the request could be processed with greater ease under Section 6203 than under the FOIA.

In contrast, in the present case, defendant is not arguing that plaintiffs' requests could be more efficiently processed under a separate statutory scheme. In fact, defendant states that if plaintiffs had

made a proper FOIA request, it would have provided plaintiffs with all proper disclosures. Moreover, defendant did not forward plaintiffs' requests for return information to the appropriate bureau as it did in *Dickstein* and as it is required to do under its regulations. Thus, while in *Dickstein* the plaintiffs still had available to them recourse within the agency, plaintiffs' only recourse is to this court.

Under such circumstances we find it appropriate to review defendant's determination that plaintiffs' requests were deficient. As described above, we find that plaintiffs' requests were overly broad and burdensome except for the portion seeking disclosure of "return information." Thus, the court holds that the agency must process that portion of each plaintiffs' request under its FOIA procedures and determine whether to grant or deny it. If the requests are denied, plaintiffs may appeal the denial through the administrative appeals process, with judicial review available once that process is exhausted. The agency has no obligation to respond further to the rest of plaintiffs' requests.

D. Other Relief

In addition to requests for injunctive and declaratory relief regarding defendant's withholding and/or maintenance of tax records, plaintiffs request various other forms of injunctive and declaratory relief. Plaintiffs seek, for instance, declarations that they do not live or work in the United States; that they are not United States citizens; that they are not subject to federal income tax; that Texas is not a part of the United States; and that the United States is not a Republican form of government and therefore is unconstitutional and must be abolished.

When faced with similar tax protest claims, courts have readily dismissed them as frivolous. *See, e.g., United States v. Mundt*, 29 F.3d 233 (6th Cir. 1994); *United States v. Collins*, 920 F.2d 619 (10th Cir. 1990). The court finds that plaintiffs' claims should meet the same fate. As it would be

difficult to improve upon the reasoning of the Tenth Circuit in *United States v. Collins*, the relevant portion follows:

> [Defendant]'s motion to dismiss advanced the hackneyed tax protester refrain that federal criminal jurisdiction only extends to the District of Columbia, United States territorial possessions and ceded territories. [Defendant]'s memorandum blithely ignored 18 U.S.C. § 3231 which explicitly vests federal district courts with jurisdiction over "all offenses against the laws of the United States." [Defendant] also conveniently ignored article I, section 8 of the United States Constitution which empowers Congress to create, define and punish crimes irrespective of where they are committed. *See United States v. Worrall*, 2 U.S. (2 Dall.) 384, 393, 1 L.Ed. 426 (1798) (Chase J.). Article I, section 8 and the sixteenth amendment also empowers Congress to create and provide for the administration of an income tax; the statute under which defendant was charged and convicted, 26 U.S.C. § 7201, plainly falls within that authority. Efforts to argue that federal jurisdiction does not encompass prosecutions for federal tax evasion have been rejected as either "silly" or "frivolous" by a myriad of courts throughout the nation. In the face of this uniform authority, it defies credulity to argue that the district court lacked jurisdiction to adjudicate the government's case against defendant. . . .
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> For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves, *See, Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12-19, 36 S.Ct. 236, 239-242, 60 L.Ed. 493 (1916); efforts to argue otherwise have been sanctioned as frivolous. . . .
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> *Id.* at 629.

Maxwell's claim that Texas is not a part of the United States is likewise frivolous. "That Texas was the only state admitted by treaty is irrelevant; a treaty is a law to be given the same force and effect as any other law." *Hanson v. Town of Flower Mound*, 679 F.2d 497, 503 (5th Cir. 1982) (citing *Whitney v. Robertson*, 124 U.S. 190, 193-94 (1888)).

III. CONCLUSION

For the foregoing reasons, the court concludes that defendant's motion to dismiss, or in the alternative for summary judgment, should be denied as to plaintiffs' request for "return information" and granted as to their remaining claims for relief. Accordingly, it is this 12th day of September, 2002, hereby:

ORDERED that defendant's motion to dismiss, or in the alternative for summary judgment, is denied as to plaintiffs' request for "return information"; and it is further

ORDERED that defendant's motion to dismiss, or in the alternative for summary judgment, is granted as to all of plaintiffs' other claims; and it is further

ORDERED that defendant must process that portion of each plaintiffs' request for "return information" under its FOIA procedures and determine whether to grant or deny it. If the requests are denied, plaintiffs may appeal the denial through the administrative appeals process, with judicial review available once that process is exhausted; and it is further

ORDERED that defendant shall make a status report to the Court every ninety days regarding plaintiffs' request for "return information." The first such report is due ninety days from the date of docketing of this order.

_____
Henry H. Kennedy, Jr.
United States District Judge

Date:_____